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<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/806,931	DRAGIC, PETER	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charlie Peng	2883	

-- **The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**  
 All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

- 1. ☐ This communication is responsive to \_\_\_\_.
- 2. ☒ The allowed claim(s) is/are 1-11.
- 3. ☒ The drawings filed on 23 March 2004 are accepted by the Examiner.
- 4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  - 1. ☐ Certified copies of the priority documents have been received.
  - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

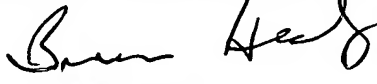
\* Certified copies not received: \_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

- 5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  - 6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
- 7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- 1. ☒ Notice of References Cited (PTO-892)
- 2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
 Paper No./Mail Date 07/19/2005
- 4. ☐ Examiner's Comment Regarding Requirement for Deposit  
 of Biological Material
- 5. ☐ Notice of Informal Patent Application (PTO-152)
- 6. ☐ Interview Summary (PTO-413),  
 Paper No./Mail Date \_\_\_\_.
- 7. ☒ Examiner's Amendment/Comment
- 8. ☒ Examiner's Statement of Reasons for Allowance
- 9. ☐ Other \_\_\_\_.

  
**Brian Healy**  
**Primary Examiner**

## DETAILED ACTION

### *Reasons for Allowance*

Claims 1 and 7 are allowed. The following is an examiner's statement of reasons for allowance:

U.S. PGPub 2004/0028101 to Byren et al. teaches a waveguide laser with a core of Yb:YAG (ytterbium doped yttrium aluminum garnet) in which trivalent ytterbium ( $\text{Yb}^{3+}$ ), at a temperature close to the melting point (of the waveguide) can be reduced to the divalent state ( $\text{Yb}^{2+}$ ), i.e., the loss of trivalent Yb is offset by equal gain (but not exceeded) by divalent Yb, a concept opposite to that by the applicant where trivalent Yb gain is preferred. (See paragraph [0063]) U.S. Patent 4,913,521 to Tajima teaches a multi-cladding fiber with a core having a shear velocity but does not teach Yb as a dopant. Prior art also do not teach a preference of trivalent Yb *over* divalent Yb in relative amount in an optical waveguide. It is the examiner's opinion that the prior art of record, taken alone or in combination, fails to disclose or render obvious that any indirect and direct losses of Yb in divalent state are exceeded by the gain attributed to Yb in the trivalent state in combination with the rest of the limitations of the claim.

Claims 2-6 and 8-11 are allowed by virtue of being dependent upon the allowed independent claims 1 and 7.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to an optical waveguide, classified in class 385, subclass 141.
- II. Claims 12-17, drawn to a method of making an optical waveguide, classified in class 65, subclass 390.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the method could be used to make a different product. For example, minimizing the formation of divalent Yb could be simply accomplished by lowering the doping level of Yb, in which case, presence of divalent Yb would be minimized.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with J. Javonavic on 09 August 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Please cancel claims 12-17.

Claims 12-17 are canceled as being drawn to a non-elected invention to place the application in condition for allowance.

#### ***Conclusion***

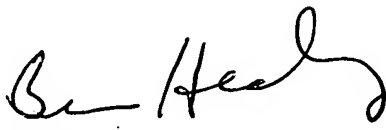
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charlie Peng whose telephone number is (571) 272-2177. The examiner can normally be reached on 9 am - 6 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank Font can be reached on (571) 272-2415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2883

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charlie Peng  
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August 10, 2005

  
Brian Healy  
Primary Examiner